

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.73 OF 2007

Dada Bandu Tambe (Mali)
(since deceased) through his LRs
A.Sarajabai Dada Tambe & Ors. .. Appellants.
Vs.
Dattatraya Ramchandra
Kulkarni & Ors. .. Respondents.

Mr.Machhindra Deshmukh for Mr.Umesh Mankapure for the
appellant.
Mr.Vishwanath S.Talkute for respondent nos.1 to 5
and 7.

**CORAM : D.B.BHOSALE, J.
DATED : 30TH OCTOBER, 2007.**

P.C.:

. Heard learned counsel for the parties.

2. This second appeal is directed against concurrent judgments of the court below by which a suit instituted by the respondent-plaintiff for specific performance of a reconveyance of agreement dated 23.8.1978 has been decreed.

3. Mr.Deshmukh, learned counsel for the appellant assailed the judgments of the courts below on two grounds. Firstly, he submitted that in view of the fact the defendants have denied execution of the re-conveyance deed, the courts below ought not to have exercised the discretion as contemplated by

section 20 of the Specific Relief Act, 1963 and decreed the suit. Secondly, he submitted that the suit was barred by limitation since it was not filed within the period of three years as contemplated by Article 54 of the limitation Act.

4. I perused the judgments of the courts below and more particularly paragraph 15 and 16 of the judgment of the appellate court. In my opinion, the discretion exercised by the courts below cannot be stated to be arbitrary. As a matter of fact the discretion exercised is sound and guided by the principles laid down in a catena of judgments of this court and the Supreme Court. Merely because the defendants had denied execution of the reconveyance agreement dated 23.8.1978 that by itself is not sufficient to refuse discretionary reliefs of specific performance. Insofar as question of limitation is concerned, both the courts below have considered it in proper perspective. The case set up by the defendant that in 1982 the father of the plaintiff had asked for reconveyance of the suit land and that he had refused performance has not been proved by the defendants. Admittedly, no specific period of reconveyance was mentioned in the agreement. The plaintiffs had send a notice through their advocate on 30.10.1985. This notice was not

replied by the defendants and hence defendants filed suit on 10.2.1987, which both the courts below have, rightly appreciated and held that the suit is within limitation. I find no substance in both the submissions. Considering the concurrent findings recorded by the courts below and as I find sufficient evidence on record to sustain those findings, this second appeal deserves to be dismissed and is dismissed as such.

(D.B.BHOSALE, J.)